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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/935,491	08/23/2001	Angel A. Gargiulo	1441-001PP	1423

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JONDLE & ASSOCIATES P.C.  
858 HAPPY CANYON ROAD SUITE 230  
CASTLE ROCK, CO 80108

EXAMINER

BELL, KENT L

ART UNIT PAPER NUMBER

1661

DATE MAILED: 12/06/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/935,491

Applicant(s)

GARGIULO, ANGEL A.

Examiner

Kent L. Bell

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status***application filed 8/23/01*

- 1) ☒ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

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**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 8/23/01 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 8/23/01
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_

*K.L. Bell*

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## Detailed Action

### Objection to the Disclosure

#### 37 CFR 1.163

The following is a quotation of section (a) of 37 CFR 1.163:

(a) The specification must contain as full and complete a disclosure as possible of the plant and the characteristics thereof that distinguish the same over related known varieties, and its antecedents, and must particularly point out where and in what manner the variety of plant has been asexually reproduced. In the case of a newly found plant, the specification must particularly point out the location and character of the area where the plant was discovered.

#### 35 USC 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

As specific to United States Plant Patent applications, the specifics of 37 CFR 1.164 (reproduced below) are controlling.

The claim shall be in formal terms to the new and distinct variety of the specified plant as described and illustrated, and may also recite the principal distinguishing characteristics. More than one claim is not permitted.

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In plant applications filed under 35 U.S.C. 161, the requirements of 35 U.S.C. 112 are limited. The following is a quotation of 35 U.S.C. 162:

No plant patent shall be declared invalid for noncompliance with section 112 of this title if the description is as complete as is reasonably possible. The claim in the specification shall be in formal terms to the plant shown and described.

The disclosure is objected to under 35 CFR 1.163(a) and under 35 U.S.C. 112, first paragraph, because the specification presents less than a full, clear, and complete botanical description of the plant and the characteristics which define same per se and which distinguish the plant from related known cultivars and antecedents.

**More Specifically:**

A. Applicant should set forth all cultivar names in the title and throughout the entire specification in single quotation marks unless preceded by the term "cultivar" as this is the proper way to set forth a cultivar designation (International Code of Nomenclature for Cultivated Plants, article 29).

B. The disclosure is objected to under 37 CFR 1.121 (e) because the Latin name of the genus and species of the claimed plant and Variety Denomination of the claimed plant should be

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preceded by a heading as set forth in 37 CFR 1.163(c)(4)(5) and 37 CFR 1.163(d). This information should be set forth before line 8 of the specification as set forth in 37 CFR 1.163(c).

C. Page 3, lines 5 and 6, Applicant sets forth two parental cultivars. However, applicant has not stated which was the female parent and which was the male parent. Applicant should set forth in the specification which was the female parent and which was the male parent. Correction and/or clarification is necessary.

D. Page 3, lines 6-8, Applicant states the instant plant was asexually reproduced from "seed" of the new variety produced by this cross pollination. It is not understood how the instant plant could have been asexually reproduced from a seed. It appears the cross pollination produced many plants from which applicant chose a particular plant, as a single plant among plants from the cross pollination, named it '90-3437', then asexually reproduced the plant.

Correction and/or clarification is necessary. Further, applicant should set forth in the specification how the instant plant was asexually reproduced such as a cutting, grafting, or something else which would be appropriate for this type of plant.

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E. Applicant should set forth in the specification a brief comparison between the instant plant and its parents, such not need be in any great detail but should at least distinguish the plants from each other.

F. Page 4, lines 5 and 6, Applicant states "superior" flavor and crispness". Applicant should delete this recitation as it appears to be a laudatory expression (MPEP 1610). Correction is necessary.

G. Page 5, lines 3-7, Applicant should set forth in the specification additional information relative to the instant plant including the typical and observed height.

H. Page 5, line 21 to page 6, line 2, Applicant should set forth in the specification additional information relative to the instant plant's canes including the typical and observed cane length.

I. Page 6, lines 13-20, Applicant should set forth in the specification additional information relative to the instant plant's tendrils including the typical and observed tendril diameter and texture.

J. Page 6, lines 3-7, Applicant should set forth in the specification additional

K. Page 7, lines 1-4, Applicant should set forth in the specification

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J. Page 6, line 20 and page 7, line 1, Applicant states "reddish". Applicant should set forth in the specification a color designation for the "reddish" coloration. The recitation "reddish" is vague and insufficient in this regard.

K. Page 7, line 13, Applicant states "reddish-purple". Applicant should set forth in the specification a color designation for the "reddish-purple" coloration. The recitation "reddish-purple" is vague and insufficient in this regard.

L. Page 7, lines 2-15, Applicant should set forth in the specification additional information relative to the instant plant's leaves including the typical and observed leaf apex and base shape.

M. Page 9, line 1, Applicant should set forth in the specification additional information relative to the instant plant's peduncle including the typical and observed diameter and coloration with reference to the color chart employed.

N. Page 9, line 14, Applicant sets forth a coloration for the "Petiole". However, applicant should verify whether petiole is intended or pedicel. If applicant intended to state

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pedicel then the typical and observed pedicel length and diameter should be set forth in the specification.

O. Page 11, line 19, Applicant states pedicel color is "Greenish-brown (14-K-3 Serpentine Green)". However, applicant previously sets forth a coloration for what applicant may have intended to be the pedicel on page 9, line 14 as Medium green (19-K-6 Sea Foam). If both recitations are for the instant plant's pedicel, it appears they should be the same coloration.

Correction and/or clarification is necessary.

P. Page 12, lines 16-20, Applicant should set forth in the specification additional information relative the instant plant's berry including the typical and observed berry brix.

Q. Page 14, The Claim, line 1, Applicant should insert --plant-- after "grapevine" as The Claim needs to be directed to "the plant" (MPEP 1605, 37 CFR 1.164). Alternatively, Applicant could delete the instant claim and insert the following --A new and distinct cultivar of Grapevine plant named '90-3437', as illustrated and described.--.

lines 16-20, Applicant should set forth in the specification additional



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R. Page 14, The Claim, line 4 and page 15, Abstract, line 4, Applicant states "superior" flavor". Applicant should delete this recitation as it appears to be a laudatory expression (MPEP 1610). Correction is necessary.

The above listing may not be complete. Applicant should carefully review the disclosure and import into same any corrected or additional information which would aid in botanically identifying and/or distinguishing the cultivar for which United States Plant Patent protection is sought.

**Claim Rejection**

the Claim, line 4 and page 15, Abstract, line 4, Applicant states "superior" flavor".  
**35 U.S.C. 112, 1st & 2nd Paragraphs**

Claim 1 is rejected under 35 U.S.C. 112, first and second paragraphs as not being supported by a clear and complete botanical description of the plant for the reasons set forth in the Objection to the Disclosure Section above.

the above listing may not be complete. Applicant should carefully review the disclosure

the Claim, line 4 and page 15, Abstract, line 4, Applicant states "superior" flavor".  
35 U.S.C. 112, 1st & 2nd Paragraphs

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### Future Correspondence

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Kent L. Bell whose telephone number is (571) 272-0973. The Examiner can normally be reached Monday through Thursday from 6:00 am to 4:30 pm.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Anne Marie Grunberg, can be reached at (571) 272-0975.

The fax phone number for the group is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (571) 272-1600.

K. L. Bell

KENT BELL  
PRIMARY EXAMINER

*Kent L. Bell*